



April 26, 2012

Senate Natural Resources, Environment and Great Lakes Committee
Lansing, MI 48912

Re: SB 1090 – Cleanup of groundwater contamination entering surface water

Dear Senators:

The Michigan Environmental Council supports efforts to speed the cleanup of contaminated properties across the state. In 1995, changes to the law required responsible parties to “diligently pursue” cleanup activities. Unfortunately, sites have languished and progress has remained slow.

I personally served on both the Office of Regulatory Reform Advisory Council on Environmental Regulation and also attended the accelerated Collaborative Steering Initiative (CSI) where the language before you originated. However, I was not able to participate in the group focused on groundwater contamination due to the CSI format of running seven subcommittees simultaneously over a two-day period.

The topics covered in SB 1090 are extremely complex, thus the Michigan Environmental Council urges the committee to move slowly and deliberatively in its review of the legislation to allow meaningful input not only the parties responsible for the cleanups, but the public that will have to live in the areas with the contamination that may be allowed to remain in place.

The Michigan Environmental Council believes the legislation has provisions which can help guide the state in its decision making, but is also seriously flawed in other ways. Our concerns include:

- Some of the standards are vague and would be difficult to enforce, for example a responsible party can decide the groundwater surface water pathway is not relevant based on “best professional judgment.” It is unclear what happens in the case where a responsible parties’ judgment differs from that of the department, especially in those cases where department approval is not required (page 3).
- The changes would allow modeling to be substituted for actual data when making determination regarding the activities needed to protect public health without government approval, in cases where:

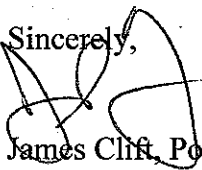
- 1) Determinations are made by parties other than responsible parties, such as a developer deciding what level of protection would be required in reusing an industrial site for residential lofts (page 5, line 15),
- 2) When a responsible party takes any additional response activities to address the GSI pathway, regardless of how small (page 4, line 24),
- 3) When someone decides themselves that they are not a liable party (page 5, line 15), or
- 4) When it is used to demonstrate a responsible party meeting generic cleanup standards in most situations (page 6, line 24).

The failure to require government oversight is a significant change in the role of government. It basically says that "protecting public health" is a function we are willing to delegate to the responsible party that has a financial incentive to minimize costs.

- The definition of surface water should not change from one part of NREPA to another and therefore surface water should not exclude waters included in part 31 (page 3, and page 17, line 14).
- It is unclear how biological criteria relate to generic cleanup criteria and the protection of public health, and whether simply not impairing current uses qualifies as an acceptable cleanup (page 9, line 3)
- Authorizes the use of scientific theories that are not peer reviewed or generally recognized in the field of toxicology and other sciences (page 10, line 5).
- It eliminates public hearings in cases where mixing zones allows hazardous substances to be placed into surface water sources and simply diluted instead of remediated (page 11, line 6).
- The bill fails to define "de minimis" impact (page 12, line 20).
- It allows a party to claim a cleanup is technical impracticability without input from the public that would be potentially exposed (page 13, line 7).
- It allows a party to by-pass permitting for discharges into surface water without the department needing to approve the cleanup plan (page 13, line 19).
- Provisions regarding retroactive applicability of the new standards could significantly increase department costs and overwhelm staff resources (page 16).

Michigan Environmental Council is willing to work with parties to clarify these provisions. However, until that time we are opposed to passage of the legislation.

Sincerely,



James Clift, Policy Director